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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/913,426 | 03/12/2002 | Kevin Cogley | P-6265 | 9779 |

7590 11/04/2004

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EXAMINER

WEEKS, GLORIA R

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3721

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/913,426

Applicant(s)

COGLEY ET AL.

Examiner

Gloria R Weeks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-4, 6-8, 10 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-4, 6-8, 10 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

1. This action is in response to Applicants' amendment received on June 25, 2004.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 2-4, 6-8 and 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Young et al. (USPN 5,014,876).

In reference to claims 2-8 and 10-11, Young et al. discloses a fastener delivery apparatus comprising: a fastener delivery tube (18) and a fastener supply (13); the delivery tube (18) being connected to the fastener supply (13) and connectable to the setting tool (20); a source of pressurized gas (51) having an outlet (45, 51) that is connected to the delivery tube (18; column 4, lines 17-20), the cross-sectional area of the outlet being substantially identical to the delivery tube; a movable transfer passage (35) disposed in-line with and between the outlet of the source of pressurized gas and the inlet of the delivery tube for transferring a fastener between the fastener supply (13) and the delivery tube (18); a seal (46) associated with the transfer passage (35) for sealing the passage so as to prevent gas leaks from the apparatus.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Young et al. (USPN 5,014,876) in view of Smart et al. (USPN 5,035,353).

Regarding claims 5, Young et al. discloses a fastener delivery apparatus with a movable transfer passage (35) that slides into orientation with the delivery tube (18). Smart et al. teaches a fastener delivery apparatus having a movable transfer passage (20) in the form of a ball valve (22) that is rotatable between a first position in communication with the fastener supply (14) and a second position in communication with a source of pressurized air (column 1, lines 50-54) and the delivery tube (34). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the movable transfer passage of Young et al. to the movable transfer passage of Smart et al. since the examiner takes Official Notice of the equivalence of a sliding mechanism and rotatable mechanism for their use in the art of transferring fasteners and the selection of any of these known equivalents to relocate the fastener from one path of travel to another path of travel would be within the level of ordinary skill in the art.

Response to Arguments

6. Applicant's arguments filed June 25, 2004, have been fully considered but they are not persuasive. Applicant has first argued that the apparatus of Young et al. fails to disclose the movable transfer passage (35) between the pressurized gas source (51) and the inlet of the delivery tube (18). Examiner disagrees based on figure 6 of Young et al., which shows the movable transfer passage (35) in a position between the pressurized gas source (51) and the inlet

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of the delivery tube (18) . Examiner agrees that the three elements of Young et al. are not co-linear as Applicant's invention is illustrated, however, this is not a limitation of Applicant's invention as claimed.

Applicant has further argued that the cross-sectional area of Young et al.'s delivery tube (18) and pressurized gas source (51) are not identical. However, the limitations of Applicant's invention as claim merely states that the cross-section areas of the two elements are to be "substantially" identical, and Examiner has deemed Young et al. to meet this limitation. Never the less, if it were found that the cross-sectional areas of Young et al's pressurized gas source (51) and delivery tube (18) were not "substantially" identical, it would have been obvious to do so for the purpose of providing an effortless and more efficient means of travel for the fastener being delivered to the setting tube.

Applicant's final argument was regarding Young et al's lack of a sealing means as claimed by Applicant's invention. The sealing means (46) of Young et al., which is specifically identified as a valve, is deemed to meet Applicant's limitations of sealing the transfer passage (35) so as to prevent gas leakage from the apparatus.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R Weeks whose telephone number is (703) 605-4211. The examiner can normally be reached on 7:30 am - 6:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 305-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gloria R Weeks
Examiner
Art Unit 3721


gtw
October 21, 2004


SCOTT A. SMITH
PRIMARY EXAMINER